

Power of Attorney Issues

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Rules Governing Practice Before the IRS

Circular 230 (31 C.F.R. Part 10):

- Governs practice before the IRS;
- Lists the types of practitioners who are authorized to practice before the IRS;
- Provides rules for enrolled agent program (application, CPE, etc.);
- Details Duties and Restrictions for Authorized Representatives; and
- Provides sanctions and rules for disciplinary proceedings.

What is Practice Before the IRS?

All matters relating to the following:

- Communicating with the IRS regarding a taxpayer's rights, privileges or liabilities;
- Representing a taxpayer at a conference, hearing, or meeting with the IRS;
- Preparing and filing documents (when done by a practitioner) with the IRS for a taxpayer; and
- Corresponding and communicating with the IRS.

§ 10.2 of Circular 230; IRS Pub. 947, *Practice Before the IRS and Power of Attorney*.

What is NOT Practice Before the IRS?

The following acts can be performed by anyone and only constitute practice when performed by a practitioner:

- Preparing a tax return;
- Furnishing information at the request of the IRS; and
- Appearing as a witness for the taxpayer.

Practitioner Duties to the IRS

- Provide information on request
- Due diligence as to accuracy
- Prompt disposition of pending matters
- File and pay taxes timely

Practitioner Duties to Clients

- Alert client of errors
- No unconscionable fees
- No false advertising
- No improper use of client funds

Types of Authorized Practitioners

- Attorneys,
- Certified Public Accountants,
- Enrolled Agents,
- Enrolled Actuaries (limited tax law topics),
- Appraisers,
- Unenrolled Return Preparers (limited practice), and
- Individuals Granted Special Appearances.

§§ 10.3, 10.5(d), and 10.7 of Circular 230

Special Appearances

Office of Professional Responsibility can authorize individual who is not otherwise eligible to practice before the IRS

- Students of a low income taxpayer clinic are one of the most common examples.
- In unusual circumstances, temporary enrolled agent status can be granted.

Special Appearances (Cont'd)

- Students working in a Low Income Taxpayer Clinic (LITC) or Student Tax Clinic Program (STCP) may represent taxpayers under a special order by the Director, Office of Professional Responsibility.
- Students must have a Form 2848 on file at the IRS with an attached copy of the special order from the Office of Professional Responsibility authorizing practice before the IRS.

Disclosing Taxpayer Information

- Safeguarding tax information is critically important to the IRS.
- IRS employees are responsible for protecting tax returns and return information.
- IRC § 6103 prohibits IRS employees from disclosing federal returns or return information except as provided by statute.

Disclosing Taxpayer Information (Cont'd)

- An IRS employee who makes a willful unauthorized disclosure may be subject to criminal penalties under IRC §§ 7213 and 7213A and discharge from employment. In addition, a taxpayer may seek civil damages under IRC § 7431 against the United States.

Authority Granted by Power of Attorney (POA)

- Form 2848
- Conveys greatest authority to a taxpayer's representative of the various types of authorizations
- Allows representative to be treated as if he/she is the taxpayer

Authority Granted by POA (Cont'd)

POA is authorized to:

- Communicate with the IRS regarding the taxpayer's rights, privileges, or liabilities under laws/regulations administered by the IRS
- Represent taxpayer at conferences, hearings, or meetings with all IRS functions
- Correspond and communicate with the IRS
- Discuss facts and the application of law

Authority Granted by POA (Cont'd)

POA is authorized to:

- Receive copies of returns, notices and account transcripts
- Prepare/file documents with the IRS on the taxpayer's behalf
- Sign IRS agreements on the taxpayer's behalf
- Inspect/receive confidential information for specified tax matters and tax periods

Special Orders

- What is a special order?
 - A letter issued by the Office of Professional Responsibility to a clinic director
 - Authorizes students to represent taxpayers before the IRS
 - Students with a valid special order should be viewed the same as any other taxpayer's representative for which a Form 2848 has been submitted

Special Orders (Cont'd)

- How do you obtain a special order?
 - Submit letter of application to:
 - Michael Hahn, Office of Professional Responsibility
Fax (202) 622-5903
 - Application must indicate names of the students and that the students will have adequate supervision from the clinic director or other clinic personnel

Special Orders (Cont'd)

- How long is a special order valid?
 - Only for the length of the school's academic quarter or semester
- How do you use a special order?
 - Every time a student submits a Form 2848 to the IRS, a copy of the special order must be attached. Failure to do so may result in the IRS rejecting the Form 2848.

Form 2848 Issues

- How long is a Form 2848 valid?
 - General rule: A Form 2848 is valid until revoked by the taxpayer or withdrawn by the representative
 - Exception: For students, a Form 2848 is only valid for 130 days after receipt by the CAF Unit of the IRS (until recently, Form 2848 was only valid for students for 90 days)

Form 2848 Issues (Cont'd)

- Do the representative and the taxpayer need to execute Form 2848 on the same day?
 - No. But no more than 45 days can pass between when the representative signs and when the taxpayer signs.

Form 2848 Issues (Cont'd)

- How do I substitute/add a representative?
 - Suppose a clinic director and a taxpayer execute Form 2848 on August 1st. Line 5 of Form 2848 must give the clinic director the power to substitute/add a representative. On October 1st, the clinic director wants to add another individual. The clinic director should then send in a new Form 2848 with his name listed first and the other individual's name listed second, and attach a copy of the original Form 2848. The taxpayer does not need to sign the new Form 2848.

Form 2848 Issues (Cont'd)

- How do I withdraw as a taxpayer's representative?
 - Send the IRS a copy of the Form 2848 that you and the taxpayer previously executed. Write “WITHDRAWING” across the top of the Form. Send it to the IRS in accordance with the “Where to File Chart” in the instructions to the Form.

Note: The Form 2848 must be signed and dated for the withdrawal to be effective.
 - Any new Form 2848 filed by the taxpayer supersedes the Form 2848 that you previously executed.

Form 2848 Issues (Cont'd)

- What if the taxpayer wants to revoke my power of attorney?
 - Advise the taxpayer to send the IRS a copy of the Form 2848 that you previously executed. Write “REVOKE” across the top of the Form. Send it to the IRS in accordance with the “Where to File Chart” in the instructions to the Form.

Note: The Form 2848 must be signed and dated for the revocation to be effective.

Common Questions

- What if the IRS believes you are representing someone who you don't actually represent?
 - Example: You represent one spouse for a joint liability but the IRS begins sending you correspondence for the other spouse.

Common Questions (Cont'd)

- What if an IRS employee doesn't recognize a student of an LITC as a valid representative?
- How do I contact the CAF Unit?